PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU ANNOUNCES EFFECTIVE DATE FOR NEW DOMESTIC SECTION 214 TRANSFER OF CONTROL PROCEDURES

New Procedures Include Certain Types of Asset Acquisitions

On March 14, 2002, the Commission revised its procedures relating to applications to transfer domestic section 214 authorizations. Because the new procedures entail new information collection requirements, they could not become effective until the Commission received approval from the U.S. Office of Management and Budget (OMB).[1] OMB approved the revised information collection on June 4, 2002,[2] and the new procedures outlined in the *Streamlining Order* and sections 63.01, 63.03, and 63.04 of the Commission's rules will become effective June 14, 2002. As of June 14th, the Commission will only accept domestic section 214 applications for transfer of control that comply with the new rules.

In order to permit an orderly transition for domestic carriers filing applications for section 214 authorization, the Bureau issues the following reminders of actions taken in the *Streamlining Order:*

- Domestic and international section 214 applications related to the same proposed transaction may be filed jointly.[3]

- All domestic section 214 applications (whether filed jointly or on a stand-alone basis) must include certain specified information in their applications to enable the Commission to make its streamlining determination and to otherwise enable processing of an application.[4]

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1 *See Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations,* 17 FCC Rcd 5517 (2002) (*"Streamlining Order"*); 67 FR 18827 (2002).

2 OMB No. 3060-0989, expires 11/30/02.

3 *See Streamlining Order,* 17 FCC Rcd at 5556-57 (section 63.04).

4 *See id.*

- Asset acquisitions that will not result in a loss of service for customers must now be filed as applications to transfer control instead of applications to discontinue service. Asset acquisitions where neither the carrier selling assets, nor the carrier purchasing assets, will provide service to existing carriers should be filed as applications to discontinue service pursuant to section 63.71 of the Commission's rules.[5]

- Transfer of control applications that are accorded streamlined treatment are automatically granted after 30 days. Carriers may close their proposed transactions on the 31st day following public notice of acceptance of an application if that public notice specifies that the application is subject to streamlined treatment and if the Commission does not remove the application from streamlined processing within 30 days from the date the public notice is released.[6]

- Comments on streamlined applications must be filed electronically within 14 days of public notice that an application has been accepted for streamlined processing, and reply comments must be filed within 21 days of the public notice date.

- The *Streamlining Order* provides that applications presumptively will be accorded streamlined treatment where: (1) both applicants are non-facilities-based carriers; (2) the transferee is not a telecommunications provider; or (3) the proposed transaction involves only the transfer of local exchange assets of an incumbent local exchange carrier (LEC) by means other than an acquisition of corporate control.

- The *Streamlining Order* provides that three additional categories of transactions presumptively will be streamlined, but only where a transaction would result in a transferee: (a) having a market share in the interstate, interexchange services market of less than 10 percent; and (2) providing competitive telephone exchange services or local exchange access services (if at all) in geographic areas served by a dominant LEC that is not a party to the transaction.

  Applicants meeting these criteria presumptively will be accorded streamlined treatment where: (1) neither of the applicants is dominant with respect to any service; or (2) the applicants are a dominant carrier and a non-dominant carrier that provides services exclusively outside the geographic area where the dominant carrier is dominant; or (3) the applicants are incumbent independent LECs that have, in combination, fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide and no overlapping or adjacent service areas.

- Any application may be removed from streamlining (or subject to non-streamlined treatment originally) if: (1) the application is associated with a non-routine waiver request; (2) the application would, on its face, violate a Commission rule or the

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5 47 C.F.R. § 63.71.

6 *See Streamlining Order,* 17 FCC Rcd at 5553-56 (section 63.03).

Communications Act; (3) an applicant fails to respond promptly to Commission inquiries; (4) timely-filed comments raise public interest concerns that require further Commission review; or (5) the Commission, acting through the Wireline Competition Bureau, otherwise determines that the application requires further analysis to determine whether a proposed transfer of control would serve the public interest.

- No application or notice is required to be filed for any domestic carrier *pro forma* transfer of control that meets the requirements of section 63.24 of the Commission's rules governing international carriers.[7]

- Carriers in bankruptcy proceedings are required to file a notification to the Commission within 30 days of transfer of control to a trustee or assumption of "debtor-in-possession" status.[8]

Carriers are also reminded that, if the transfer of control will change the presubscribed telecommunications service provider of the transferring carrier's customers, the carrier acquiring the customers must comply with the authorization and verification requirements set forth in the Commission's slamming rules.[9] In particular, an acquiring carrier should be aware of the Commission's streamlined procedures for complying with the slamming rules to effect the bulk transfer of subscribers.[10]

For further information, please contact Tracey Wilson, at (202) 418-1394 or Bill Dever, Competition Policy Division, Common Carrier Bureau at (202) 418-1578.

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7 47 C.F.R. § 63.24.

8 *See Streamlining Order,* 17 FCC Rcd at 5555-56 (section 63.03(d)).

9 "Slamming" is the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. *See* 47 C.F.R. §§ 64.1100-64.1190.

10 *See* 47 C.F.R. § 64.1120(e).